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VIA ECF

The Honorable Robert W. Lehrburger
United States Magistrate Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1960
New York, NY 10007-1312

Re: ***Sergeants Benevolent Association Health & Welfare Fund v. Actavis, plc, et al.*****, Case No. 15-cv-06549-CM-RWL (S.D.N.Y.)**

Dear Judge Lehrburger:

We represent the Forest and Merz Defendants[1] and write jointly with Sergeants Benevolent Health & Welfare Fund ("Plaintiff") and the non-settling Generic Manufacturer Defendants.[2] In accordance with Your Honor's direction on June 28, 2019 (ECF No. 272), we write to advise the Court of certain agreements and disputes between Plaintiff and Defendants concerning the conduct of discovery and further scheduling in this matter. Counsel met and conferred telephonically on July 19, 2019 and July 23, 2019, and further communicated with follow-up emails.

Case Management Order. Defendants and Plaintiff disagree about the appropriate CMO for this case.

Defendants: Defendants understand Judge McMahon's September 10, 2018 Order (ECF No. 122) to have lifted the stay of discovery in the IPP matter for the limited purpose of allowing Plaintiff to participate in a mediation. Now that the mediation did not result in a settlement of Plaintiff's claims against the remaining defendants, Defendants' position is that the IPP case should remain stayed pending the ultimate outcome of the DPP matter, *In Re Namenda Direct Purchaser Antitrust Litigation*, 1:15-cv-07488-CM-RWL. That case is set for trial on October 28, 2019.

By way of background, on September 13, 2016, Judge McMahon severed this case from the DPP action and placed it on the suspense calendar noting that, "[t]here is no reason for this Court to spend its time delving into the arcana of myriad state antitrust and unfair business

[1] "Forest and Merz Defendants" include Actavis plc, Forest Laboratories, LLC, Merz Pharma GmbH & Co., KGaA, Merz Gmbh & Co., KGaA, and Merz Pharmaceuticals GmbH.

[2] The non-settling generic defendants include Dr. Reddy's Laboratories, Ltd., Dr. Reddy's Laboratories, Inc., Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Barr Pharmaceuticals, Inc., and Cobalt Laboratories, Inc.

practices laws before the factual record in this case is developed and the federal claims are resolved one way or another." *Sergeants Benevolent Ass'n Health & Welfare Fund v. Actavis, PLC*, No. 15-cv-6549 (CM), 2016 U.S. Dist. LEXIS 128349, at *53 (S.D.N.Y. Sep. 13, 2016). On September 10, 2018, Judge McMahon lifted the IPP stay for the limited purpose of mediation to allow non-duplicative discovery "so [Plaintiff] can participate meaningfully in a mediation . . . ." ECF No. 122 at 2. Mediation attempts between Plaintiff, the Forest and Merz Defendants, and certain Generic Manufacturer Defendants were unsuccessful. *See* ECF Nos. 252, 270. Following notification that mediation had failed between Plaintiff and the Forest Defendants, Judge McMahon stated that Plaintiff's state law claims "are going to sit in a box until I've tried a federal case. That's just the way it's going to be." *In Re Namenda Direct Purchaser Antitrust Litigation*, 1:15-cv-07488-CM-RWL, Tr. of Proceedings on March 15, 2019 at 5:24–6:6, ECF No. 689. In light of the foregoing, Defendants' position is that the IPP case should remain stayed pending the resolution of the federal claims at issue in the DPP matter and that this course of action would be in accord with Judge McMahon's statements for the management of this case.

If the Court is not inclined to keep the IPP case stayed in its entirety, the parties have reached an agreement on certain dates moving forward, which are included in Exhibits A and B. The Forest and Merz Defendants' position is that, even if the case does not remain stayed in its entirety, discovery against the Forest and Merz Defendants should remain stayed through completion of the DPP trial. If the Court is inclined to stay discovery against the Forest and Merz Defendants until after the DPP trial, Plaintiff has represented that it will not argue against such a stay. The parties agree that the third-party subpoenas Forest issued in this action will remain stayed pending completion of the DPP trial.

Plaintiff: Plaintiff believes that discovery should go forward with regard to all six remaining defendants. Of these six remaining defendants, only Forest is a defendant in the DPP case with a trial set for October, 2019. However, should the court stay proceedings against Forest it is Plaintiff's position that discovery should resume with regard to the remaining four Generic Manufacturer Defendants and Merz.[3]

Judge McMahon's Order of September 10, 2018 (ECF No. 122) lifting the stay of discovery in the IPP case pending the then contemplated mediation did not address what discovery, if any, would be permitted in the event that the mediation did not resolve the case in its entirety. Here, the mediation was successful as to four of the eight Generic Manufacturer Defendants. The IPP litigation, therefore, continues with regard to four Generic Manufacturer Defendants and two Brand Manufacturer Defendants.

In addressing the state of discovery in the IPP case, Judge McMahon noted in an Endorsed Letter dated May 17, 2019 (ECF No. 260), "I naively assumed that the generics were being subpoenaed in the DPP case, and that they would end up producing exactly the same documents in response to those subpoenas as they would be required to produce as parties in the IPP case. In short, I thought discovery in the IPP case would be virtually non-existent, because everything

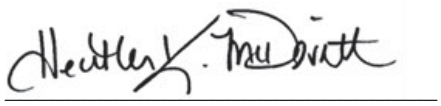
[3] Merz was named initially in the DPP case and later dropped by the DPPs as a defendant. We also note that Forest and Merz continue to be represented by the same counsel. While Plaintiff believes that discovery should resume at this time as to Merz, Plaintiff would be willing to stay discovery with regard to Merz pending the outcome of the DPP trial.

relating to the settlement of the Hatch-Waxman lawsuits would have been produced in the DPP case. Knowing otherwise, as I do now…"

There is discovery in the IPP case that did not and will not overlap with the DPP case. It is Plaintiff's position that additional discovery is necessary and that there is no reason to delay such discovery. At the very least, it would be prudent to proceed with discovery with the defendants that are unique to the IPP case.

We appreciate the Court's continued attention to these matters.

Respectfully submitted,

By: 

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